



February 10, 2000

Mr. Hugh W. Davis Jr.
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102-6311

OR2000-0494

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131515.

The City of Fort Worth Police Department (the “department”) received a request for the personnel and internal affairs records of a named police officer. You claim that the responsive internal affairs documents must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. You also inform us that those documents which constitute the civil service file will be provided to the requestor. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.101 excepts from disclosure “information deemed confidential by law, either constitutional, statutory, or by judicial decision.” You represent that the documents at issue are records maintained by the department under section 143.089(g) of the Local Government Code. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the city’s police department is required to maintain as part of the police officer’s civil service file, and one that the city’s police department may maintain for its own internal use. Local Gov’t Code § 143.089(a), (g).

Section 143.089(g) reads as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the

department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director [of the civil-service commission] or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Subsection (g) authorizes city police and fire departments to maintain for their own use a file on a police officer or fire fighter that is separate from the file maintained by the city civil service commission. "The department may not release any information contained in the department file to any agency or person," but instead "the department shall refer to the director [of the civil-service commission] or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file." Local Gov't Code § 143.089(g); *see City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 952 (Tex. App.--Austin, 1993, writ denied).

The court in *City of San Antonio* addressed the availability of information that is contained in the department's internal file pursuant to section 143.089(g). The court determined that section 143.089(g) makes confidential any records kept in a department's internal file. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied) (in construing section 143.089, the court found general legislative policy that allegations of misconduct against police officers and fire fighters not be subject to compelled disclosure unless they have been substantiated and resulted in disciplinary action). You inform this office that the submitted "[i]nternal affairs files are maintained by the department as part of each officers' departmental personnel file maintained for department use." Consequently, since you represent that the submitted records are maintained only within the section 143.089(g) file, we conclude that such records are confidential. Thus, the city must not release the records to the requestor. Gov't Code §552.101. We note, however, that the section 143.089(g) file contains a document that relates to a criminal investigation and several training materials. Thus, if these records exist elsewhere, outside the section 143.089(g) file, these records would be subject to disclosure under the Public Information Act unless an exception is applicable.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

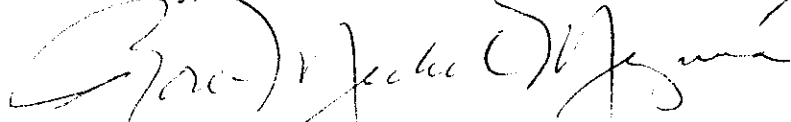
filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Rose-Michel Munguía", written over a horizontal line.

Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMM/jc

Ref.: 131515

Encl. Submitted documents

cc: Mr. Daniel Young
2630 West Freeway
Suite 220
Fort Worth, Texas 76102
(w/o enclosures)